IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

Civil Writ Petition No.15489 of 2002
Date of Decision: 18 .9.2007

R.L.Sankhla ..Petitioner

Versus

The Hon'ble Punjab and Haryana High Court and others

..Respondents

CORAM: HON'BLE MR. JUSTICE H.S.BHALLA

Present:- Mr. J.K.Sibal, Senior Advocate with Mr. Sapan Dhir, Advocate for the petitioner.

Mr. Sumeet Malhotra, Advocate for Respondent-High Court.

Mr. Ashok Jindal, Additional Advocate General, for the State of Haryana.

H.S.BHALLA, J.

The petitioner, who was working as Additional District and Sessions Judge, Faridabad, lost his bread on 8.8.2002 when he was asked to go back home by passing an order of compulsory retirement in public interest. In order to revive his bread and to work actively as a Member of the Haryana Superior Judicial Service, he knocked at the door of this Court by filing a petition under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the adverse remarks recorded on the work and conduct of the petitioner for the year 1999-2000; the rejection of the representations against these remarks and as well as the order dated 8.8.2002 (Annexure P-16).

The other facts required to be noticed for the disposal of this petition are that the petitioner was appointed to the judicial service in Haryana on 11.5.1981 as a member of the Subordinate

Judicial Service. The petitioner was promoted as Additional Senior Sub Judge in December 1989 and thereafter, he was promoted as Additional District and Sessions Judge. The petitioner was suspended in contemplation of disciplinary proceedings by this Court to be initiated against him. During the course of inspection,on 2.9.2000 the Inspecting Judge recorded adverse remarks on the integrity of the petitioner, which were communicated to him by District and Sessions Judge, Faridabad. Representation filed by the petitioner against those adverse remarks was also dismissed by the then Inspecting Judge. The petitioner filed Civil Writ Petition No.7009 of 2002 praying for the quashing of the suspension order as he remained under suspension virtually for two years without any charge sheet or inquiry and the High Court passed an order on 6.5.2002 in the writ petition directing that the respondent should pass an appropriate speaking order on the representation of the petitioner dated 2.4.2002. On 24.7.2002 suspension order passed against the petitioner was revoked. The petitioner re-joined his service on 30.7.2002. Memo dated 25.7.2002 was communicated to the petitioner on 31.7.2002 by virtue of which he was informed that Hon'ble the Chief Justice and the Hon'ble Judges of the High Court had been pleased to record in the Annual Confidential Report for the year 1999-2000 that his integrity was doubtful. The Government of Haryana on the recommendations of this Court passed the impugned order dated 8.8.2002 (Annexure P-16) retiring the petitioner from service in public interest.

This petition was contested by the respondents. Most of the assertions raised in the petition were denied by the respondents. However, it is submitted through the reply that the petitioner was

reinstated in service vide office order dated 24.7.2002 and assumed charge on 30.7.2002. In the meanwhile, in the meeting of Hon'ble Judges held on 26.7.2002, the matter regarding retention in service of the petitioner beyond the age of 50 years was considered and it was decided that a recommendation be made to Haryana Government that the petitioner be retired from service forthwith by giving him three months' pay and allowances in lieu of notice as it would be in public interest to do so. It has been further pointed out that in accordance with the aforesaid decision, the requisite recommendation was made to Haryana Government vide this Court's letter dated 29.7.2002 and the Haryana Government vide order dated 8.8.2002 conveyed the order of the Governor of Haryana retiring the petitioner from service with effect from the date of communication to him on payment of three months' pay and allowances in lieu of the period of notice. A copy of the original order was sent to the District and Sessions Judge, Faridabad for effecting the service upon the petitioner and District Judge was requested to obtain and forward his acknowledgment, charge relinquishing report and copy of receipt of payment of pay and allowances so that the same be sent to Haryana Government for issuing necessary Gazette notification. District Judge was further requested to make necessary arrangement for the payment of three months' pay and allowances in lieu of period of notice. District and Sessions Judge, Faridabad, vide letter dated 13.8.2002 has forwarded the acknowledgment in original in token of having received the retirement order dated 8.8.2002 of the Haryana Government and charge relinquishing report dated 10.8.2002 obtained from the petitioner. It is further pleaded that District Judge has further intimated that Dalbir Singh Nazir of his Office was deputed to

hand over the draft amounting to Rs.60,621/- to the petitioner, but as reported by the Nazir, he has refused to accept the said draft and the same has now been sent to the petitioner through registered post. The Haryana Government has also issued a notification dated 30.9.2002 retiring the petitioner from government service with effect from 10.8.2002 (After Noon) in terms of order dated 8.8.2002 of the Governor of Haryana and finally, it was prayed that the petition be dismissed.

I have heard learned counsel for the parties and have also gone through the record of the case meticulously.

The entire case of both the parties revolves around the order dated 8.8.2002 (Annexure P-16) and in order to arrive at the right conclusion, it is necessary to reproduce that order, which runs as under:-

> **" Whereas on the recommendation of the Hon'ble Punjab and Haryana High Court, Chandigarh, it has been decided by the State Government to retire Shri Rattan Lal Sankhla, a member of the Haryana Superior Judicial Service from service in public interest.**
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> **2. Now, therefore, in terms of the provisions contained in clause (d) of rule 3.26 of Punjab Civil Services Rules, Volume-I, Part-I read with clause A(c) of Rule 5.32 of Punjab Civil Services Rules, Volume-II, as applicable to the State of Haryana, the Governor of Haryana hereby orders the retirement of Sh. Rattan Lal Sankhla, a member of the Haryana Superior Judicial Service from service with effect from the date of communication of this order to him on payment of three**

months' pay and allowances in lieu of the period of notice

Sd/-

Dated Chandigarh, the
8th August,2002 (A.N.MATHUR)
Chief Secretary to Government Haryana."

Learned counsel appearing for the petitioner argued that there was no material on record to lead to the conclusion that the petitioner has lost his utility for the post he was holding. It was submitted that under the relevant rules, the appointing authority should be satisfied that the concerned government servant, has on account of his idolence or doubtful integrity or incompetence to discharge official duties or inefficiency in due performance of official duties has lost his utility. Although, it is a subjective satisfaction of the appointing authority, yet it has to be based on various aforesaid factors enumerated in the Rule itself. In other words, the contention is that there should be material on record to justify the subjective satisfaction on the Appointing Authority as envisaged in the rule. According to the learned counsel for the petitioner, there was no such material on record and therefore, the alleged subjective satisfaction of the appointing authority was without any basis and it showed non-application of mind. I have considered the contention raised by the learned counsel for the petitioner, but for the reasons to be recorded by me hereinafter, I find that the same does not find favour with me.

It is settled law that in matters requiring subjective satisfaction, a court exercising jurisdiction under Article 226 of the Constitution of India cannot go into sufficiency of material for arriving at subjective satisfaction. The Court has only to be satisfied that there was material on record and the decision of the concerned authority is based on material on record. A subjective satisfaction can

also be challenged on the ground of mala fides on the part of the concerned authority. Fortunately, in the present case, there is no allegation of mala fides against anyone nor any argument was raised suggesting mala fides on the part of any person or authority involved in the decision making process.

The law on the subject of compulsory retirement is fairly well settled and has to be applied to the facts of a particular case in hand.

In Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, AIR 1992 SC 1020, the Supreme Court enumerated the following principles in this behalf:

> **" (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.**
>
> **(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.**
>
> **(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order.**

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of courts attaching more importance to record of an performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

The principles laid down by the Apex Court reproduced above have been generally followed by the Courts. Thus, so far as the impugned order dated 8.8.2002 is concerned, it only says "Whereas on the recommendation of the Hon'ble Punjab and Haryana High Court, Chandigarh, it has been decided by the State Government to retire Shri Rattan Lal Sankhla, a member of the Haryana Superior Judicial Service from service in public interest....." Such an order of compulsory retirement is not to be treated as punishment. It does not imply any stigma. The power to compulsorily retire an officer is meant for being used to improve efficiency in government service. The officers who are not able to efficiently discharge their official duties and become a liability to public service on account of doubtful

integrity, inefficiency or incompetence need not be continued in service. It has been often said that dead wood has to be chopped off. Faced with this situation, learned counsel for the petitioner has vehemently argued that the decision regarding compulsory retirement has to be based on an over all assessment of the entire record of service of the officer, whereas in the instant case, the petitioner has been compulsory retired on account of single entry in service casting doubtful integrity of the petitioner, but this contention of the learned counsel is liable to be noticed only for the sake of rejection, inasmuch as, to my mind, keeping in view the facts and circumstances of the case, a Judicial Officer can be pre-maturely retired even on the basis of a single adverse entry regarding integrity against him and a decision retiring the petitioner from service compulsorily has been taken in public interest. In the instant case, I find that the rules permit compulsory retirement of an officer and a decision regarding retiring the petitioner compulsorily from service has been taken in accordance with the rules.

Learned counsel for the petitioner further pointed out that on account of complaint against the petitioner, he was placed under suspension, but later on, suspension order was revoked and no inquiry was conducted on the basis of that complaint. Learned counsel is right to the extent that no proceedings were initiated against the petitioner under the rules on the basis of the complaint. Thus, the complaint appeared to have been dropped. It was not considered necessary to initiate any disciplinary action against the petitioner. However, his performance was otherwise assessed. It was felt that it would be in public interest to prematurely retire the petitioner. Consequently, the recommendation was made to the State

Government in pursuance of which the impugned order was passed. It is a bona fide exercise of power under the rules. The decision is neither arbitrary nor mala fide. In fact, such decisions are necessary to improve efficiency in service. To my mind, recording of Annual Confidential Report is, in essence, subjective and administrative and the making of an adverse entry is not equivalent to imposition of penalty which would necessitate an enquiry and the giving of reasonable opportunity of being heard to the government servant concerned. It is further settled that recording of Annual Confidential Reports was a matter of subjective satisfaction of the officer concerned, the correctness thereof cannot be gone into by the court. The proper remedy for the person aggrieved to file a representation against the adverse remarks and in the instant case, the petitioner also opted to file a representation, which was also dismissed. Since I am dealing with the case of a higher Judicial Officer, the nature of judicial services is such that continuance in service of an officer of a doubtful integrity would mean condoning corruption. Moreover, no employer can be saddled with responsibility to retain an employee, who is proved to be corrupt or indulging in dishonest practices, especially in an Institution, which is considered a `temple of justice' where transparency and honesty of an officer is at stake and is adjudged at every step. Showing sympathy in a case like this possibly be construed as condoning corruption or even possibly be recorded as indirectly encouraging dishonesty. That apart, it is impossible to prove by positive evidence the basis for doubting integrity of a judicial officer. Reliance is required to be placed on the opinion of the person who had the opportunity to watch the performance of the officer and formation of the opinion with regard to over all reputation

enjoyed by the petitioner concerned. Moreover, lower judiciary is the main hub of the judicial system and the weeding out of the dead wood from the judicial system in the administration of justice is must, so that general public may not lose faith in the justice delivery system and in the instant case, it cannot be said that the order of compulsory retirement of the petitioner is, in any way, erroneous or unjustified.

It is a painful decision, which is to be taken in order to maintain the dignity of the judicial system and for improving the efficiency in service.

In the light of what has been discussed above, I do not see any illegality or impropriety in the impugned order dated 8.8.2002 retiring the petitioner compulsorily. Resultantly, writ petition filed by the petitioner fails and is hereby dismissed with no order as to costs.

September 18, 2007 **(H.S.BHALLA)**
VK **JUDGE**